STATE OF MICHIGAN
IN THE SUPREME COURT

ON APPEAL FROM THE COURT OF APPEALS
Hilda R. Gage, PJ, E. Thomas Fitzgerald, Jane E. Markey, JJ.

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

No.120112

vs.

JACK CHAVIS,
Defendant-Appellee.

Lower Court No. 98-014048
COA No. 218911

APPELLANT'S BRIEF ON APPEAL

******ORAL ARGUMENT REQUESTED* *****

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I.

The Court of Appeals held that MCL 750.411a, which provides that a person "who intentionally makes a false report of the commission of a crime" while knowing the report is false is guilty of a crime, applies only to the report of a fictitious crime, and not a report of an "actual" crime that misrepresents the details of its occurrence. Is the Court of Appeals correct that the statute should be read to say "who falsely reports that a crime has been committed"?

The People answer: NO

Defendant answers: YES

STATEMENT OF FACTS AND PROCEEDINGS

Defendant was charged with Filing a False Report of a Crime contrary to MCLA 750.411a and convicted at a bench trial.

During opening statements the prosecutor indicated that defendant had called the police on April 14, 1998 to report that he had been carjacked. Shortly thereafter William Bonner was stopped while driving defendant's car. Thereafter defendant came into the police station and admitted he lied at the time he filed the carjacking report indicating that he did this so that the police officers would not know that he was in the neighborhood buying cocaine.

In defendant's opening statements counsel indicated that defendant did in fact get carjacked, but in a different place and in a different manner, by a cocaine dealer. Counsel cited to the court that William Bonner, the cocaine dealer, was later involved in a car chase with the police. When stopped by the police, Bonner's story was that he was with a white guy when they both wanted more crack, and the white guy gave him his car and some money to go get more crack. While Bonner's description of the white guy matched this defendant, Bonner was part of the carjacking team that had just taken defendant's car and wallet. Defendant argued that the carjacking report was "true" even though the details were not true.

The prosecutor's first witness, police officer Sanchez testified that on 4-14-98 he had contact with defendant at South Fort and Outer Drive between 7:15 p..m. and 8:00 p.m. (16-18A). At that time the defendant said he was carjacked by four black males who took his

car and his property. Defendant also told the police that he had had a gun put to his head and was beaten by bats and kicked out of the car. He also said these individuals stole his wallet and gold necklace and ring. (18A) The witness found the car an hour later being driven by William Bonner (20-22A) In recovering the car, the police engaged in a vehicle pursuit of Bonner, and later learned that Bonner used a false name. (22-23A). The police told the defendant that they didn't believe his story about the carjacking. (21-22A) The officer testified that he believed that defendant was lying because he had said he had been beaten with baseball bats yet there were no injuries (24A) Defendant then acted agitated, upset, and hostile toward the police who were investigating the crime.(25A) During cross-examination, the witness agreed that defendant was being evasive as to why he was in the neighborhood where the crime occurred. (28A)

Officer Randell Schnotala testified that he took a statement from the driver of the car, William Bonner, and Bonner indicated that there was crack involved and that defendant had given him the vehicle voluntarily. (31-32A7) The witness testified that after several attempt to contact this defendant, and several days later, defendant finally called him. (32-33A) Defendant then came in on April 21, 1999 and told Schnotala that the police reports were not true. Defendant said that he was a crack cocaine user and what he had said was not true, beginning with the location. (33A) Defendant didn't however say specifically what was not true (34A).

Defendant testified at the trial that he was purchasing crack on the date in question (39A) He let a male into his car who said he wanted to go somewhere (40A) The male got out and went to a house on Edsel or Electric (41A) to get dope. Then the male got back into the car showing defendant the purchase. When that occurred, the hatchback of the car went up and two males climbed into the car. The first male removed the key from the ignition and one of others pointed a gun at him. Soon he was being choked by one of them and he passed out. When he awoke, he was missing jewelry, a watch, a necklace, rings, and a wallet. (42-43A). Defendant said he then chased after these males who were walking away from his car, but they returned and began beating him with a cue stick and fists (43A) They then took the car. (45A) The defendant then called the police and told them that he was at the gas station when he was carjacked. He told them that he had just left his sister's house and was at the gas station where someone had put a gun to his head and made him drive there. He said that that was the part that he had falsified. He insisted nonetheless that he was in fact carjacked and robbed (46A). The trial judge convicted. 67-68A).

On July 20, 2001, in a published opinion, the Court of Appeals held that a report of a crime that has occurred is not within the prohibition of the statute if a crime has in fact occurred, even if the report misrepresents materials facts concerning the commission of the

crime. Rehearing was denied on September 18, 2001. The People sought leave, which was denied, but granted on reconsideration.

ARGUMENT

I.

The Court of Appeals held that MCL 750.411a, which provides that a person "who intentionally makes a false report of the commission of a crime" while knowing the report is false is guilty of a crime, applies only to the report of a fictitious crime, and not a report of an "actual" crime that misrepresents the details of its occurrence. The Court of Appeals incorrectly held that the statute should be read to say "who falsely reports that a crime has been committed."

The Task

It is essentially a truism of statutory construction that "[i]n determining the scope of a statute, we look first to its language,"[1] giving the "words used" their "ordinary meaning."[2] As Justice Cooley well put it for this court long ago, in determining the meaning of statutory language "[t]he fair and natural import of the terms employed, in view of the subject matter of the law, is what should govern ... and as far as possible, effect must be given to every word, phrase, and clause in the statute."[3] The judicial function, when asked to interpret and apply the words of a statute, "is merely academic to begin with, to read English intelligently, and a consideration of consequences comes into play, if at all, only when the meaning of the

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[1] *United States v. Turkette*, 452 US 576, 580, 101 S Ct 2524, 2527, 69 L Ed 2d 246 (1981).

[2] *Richards v. United States*, 369 US 1, 9, 82 S Ct 585, 591, 7 L Ed 2d 492 (1962).

[3] *People ex rel. Twitchell v. Blodgett*, 13 Mich 127, 168 (1865).

words used is open to reasonable doubt."[4] Courts must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the purpose of the statute.[5] By statute, these principles apply to interpretation of the penal code: "The rule that a penal statute is to be strictly construed shall not apply to this act or any of the provisions thereof. All provisions of this act shall be construed according to the fair import of their terms, to promote justice and to effect the objects of the law."[6]

Discussion

The Court of Appeals has held that MCL 750.411a, which prohibits false reports "of the commission of a crime," applies only where no crime at all has been committed, and not to false reports of the manner of the commission of a crime that has actually occurred. Filing a report that falsely relates the manner in which an "actual" crime occurred, that court said, does not fall within the "plain language" of the statute. But the court reached its conclusion by rewriting the statute, rather than looking to the fair import of its terms as actually written, saying that it provides that "those who make police reports *falsely claiming that a crime has been committed* are guilty of making a report of a false crime."[7] This is not the "plain

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[4] *Northern Securities Co. v. United States*, 193 US 197, 400- 401, 24 S Ct 436, 468, 48 L Ed 679 (1904)(Holmes, J.). See also *Hoste v. Shanty Creek Management, Inc.*, 459 Mich 561, 574(1999); *Western Mich. Univ. Bd. of Control v. Michigan*, 455 Mich 531, 539 (1997).

[5] *Marquis v Hartford Accident and Indemnity (After Remand)*, 444 Mich 638, 644 (1994).

[6] MCL § 750.2.

[7] *People v Chavis*, 246 Mich App 741, 744 (2001).

language" of the statute for it is not the language of the statute at all. The statute reads that it is a crime if a person "intentionally makes a false report of the commission of a crime." The Court of Appeals has read this language as though it reads "intentionally makes a false report that a crime was committed" when this is *not* what the statute says.

The Court of Appeals noted that in its research it had found no cases "where a defendant was convicted of this type of crime for lying about details other than whether a crime had actually been committed."[8] But other jurisdictions have statutes worded in the manner that the Court of Appeals rewrote the Michigan statute.[9] For example, the Illinois statute, to which the Court of Appeals referred, provides:[10]

> (a) A person commits disorderly conduct when he knowingly...[t]ransmits in any manner to any peace officer, public officer or public employee a report to the effect that *an offense has been committed*, knowing at the time of such transmission that there is no reasonable ground for believing that such an offense *has been committed* (emphasis supplied).

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[8] *Chavis*, fn 1.

[9] The statute construed in *People v Hartmann*, 2001WL 1275920 (10-23-2001), an unpublished California Court of Appeals decision, provides that it is a crime to "report that a felony or misdemeanor has been committed knowing the report to be false...." Defendant alleged that an element of the offense was that the prosecution was required to prove that the crime reported had not occurred. The court answered that the statute "does not require that the reported crime itself did not occur, although violation can occur in that manner, but only that the defendant know 'the report' concerning the burglary 'to be false'....[defendant] violated section 148.5 either when he reported a burglary which did not occur or when he made a false report about a burglary that did occur."

[10] Ill.Rev.Stat.1985, ch. 95 1/2 , par. 4-103(a)(6).

In like manner is the New Jersey statute:[11]

> A person commits a disorderly persons offense if he...[R]eports or causes to be reported to law enforcement authorities an offense or other incident within their concern knowing that it *did not occur* (emphasis added).

The Minnesota statute also proscribes "Whoever informs a law enforcement officer that a crime has been committed, knowing that it is false...."[12] And some of these jurisdictions treat the giving of false information that hinders or obstructs an investigation in a separate statute or section.[13]

Our statute, in contrast, refers to false reports "of the commission of a crime." If a crime occurred, and a news reporter inaccurately reported the details of the crime, it could well be said that he or she had "misreported" the commission of the crime, though we would not say the reporter had misreported "that a crime was committed." So, too, here. The defendant falsely reported "the commission of" the crime when he deliberately gave false information regarding the manner in which it occurred. Webster's Third International Dictionary (Unabridged) defines "commission" as the "act of doing, performing, or committing," and Black's Law Dictionary is to the same effect ("the act of doing or perpetrating"). Replace the word "commission" with its definition, then, and the statute

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[11] N.J.S.A. 2C:28-4b(1).

[12] Mn. St. § 609.505.

[13] See e.g. Ind.Code § 35-44-2-2 (...gives false information in the official investigation of the commission of a crime, knowing the report or information to be false....").

reads "intentionally makes a false report of *the act of perpetrating* of a crime." By the ordinary import of the words employed, one who misdescribes material details when reporting a crime that has actually occurred has made a "false report of the act of perpetrating of a crime."

The "plain language" of the statute, then, prohibits not only false reports that a crime was committed, but also false reports of the "commission" of a crime, which includes falsely describing the manner in which the event occurred. After all, under the statute the word "false" modifies the *report* not the offense. The *report* of the commission of the offense here was false,[14] and deliberately so, even if *an* offense occurred. Because the defendant made a false *report* of the perpetrating of an offense,[15] the conviction should have been upheld.[16]

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[14] See *Moskal v. United States*, 498 US 103, 119, 111 S Ct 461, 471, 112 L Ed 2d 449 (1990), Scalia, J., dissent: "A forged memorandum is "falsely made"; a memorandum that contains erroneous information is simply "false."

[15] Further, even taking the Court of Appeals opinion on its own terms, defendant here *did* report a crime that *had not occurred*. Though "a" crime had occurred, it was not the one that defendant reported, because it differed in materials details.

[16] Police time and efforts are wasted just as surely when they must pursue false lines of inquiry as when they investigate a "crime" that never occurred.

RELIEF

WHEREFORE, the People request this Honorable Court to reverse the Court of Appeals and affirm the defendant's conviction.

Respectfully submitted,

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